SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

02/11/2000

HONORABLE ROBERT D. MYERS

CLERK OF THE COURT
FORM V000

CV 99-11937

D. Glab
Deputy

VOTEPAC, ET AL
v
BETSY BAYLESS, ET AL

Filed:_____

ATTORNEY GENERAL
BY THOMAS MCCLORY

TIMOTHY HOGAN # 004567

ATTORNEY GENERAL
BY CHARLES PIERSON

ATTORNEY GENERAL/SCOTT BALES
BY DENNIS BURKE

MINUTE ENTRY

This case came before this Court on December 14, 1999, for oral argument on cross-motions for Summary Judgment. After oral argument this Court took the matter under advisement. However, after receiving an ex parte letter dated December 20, 1999 from counsel for Defendant-Intervenors, by minute entry dated December 21, 1999, it was ordered that this matter was no longer under advisement. Plaintiffs were granted time to file a response to Defendant-Intervenor's letter. Having received and reviewed Plaintiff's response and a supplemental pleading dated January 18, 2000 from Defendants addressing the Defendant-Intervenor's letter, and taking into account all of the pleadings and oral arguments of the parties, this Court now rules as follows:

Background

Plaintiffs VOTEPAC, a registered Arizona Political Committee, David Armstead, Ed Cirrillo, Rick Lavis, and Betty Rockwell allege that the Citizens Clean Election Act (hereinafter "CCEA"), violates the Arizona Constitution and ask that the entire CCEA be declared invalid. Defendant Clean Elections Commission and Defendant-Intervenors Arizonans for Clean Elections, maintain that the CCEA is constitutional, and further argue that if any of the challenged sections of the CCEA are found unconstitutional that such sections can be severed and the remaining provisions of the CCEA should remain in effect. In this minute entry,

"Defendants" shall refer to both the Clean Elections Commission and Arizonans for Clean Elections unless otherwise noted.

The legislative authority of the State of Arizona is vested in a bicameral Legislature, but the people of the state reserved to themselves the power of initiative. AZ Const. art. IV, pt. 1, § 1(1)-(2).[1] The CCEA appeared as Proposition 200, an initiative, on the November 1998 general election ballot and in the 1998 publicity pamphlet published by the Secretary of State. Proposition 200 was approved by a majority of the voters at the 1998 general election. The CCEA became operative on February 16, 1999.

The Citizens Clean Elections Commission (hereinafter "CCEC") was created as a new entity under the CCEA. Pursuant to the Act, the CCEC is responsible for overseeing the Citizens Clean Election Fund, ensuring that candidates who participate in the fund comply with the spending limits established by the CCEA, providing equal funding for participating candidates, and generally takes care to see that the provisions of the CCEA are faithfully executed. See A.R.S. §§ 16-940 to 16-961. Pursuant to the CCEA, the Commission on Appellate Court Appointments screens and nominates slates of three candidates to serve as commissioners on the CCEC. These candidates are then appointed as members of the CCEC by designated state officials.

The initial appointment of CCEC commissioners were made, in order, by Governor Jane Hull (R), Attorney General Janet Napolitano (D), Secretary of State Betsey Bayless (R), Senate Minority Leader Jack Brown (D), and State Treasurer Carol Springer (R). Under the CCEA, Supreme Court Justice Stanley Feldman was designated to make the fourth appointment to the CCEC as he was the second highest statewide official not of the same party as the Governor. Justice Feldman declined to make the appointment. Supreme Court Justice Ruth McGregor, also not of the same party as the Governor, declined to make the fourth appointment as well. It was after these two members of the Supreme Court decline to make an appointment that Senate Minority Leader Brown was designated to make the appointment. After the initial appointments to the CCEC, the appointment of commissioners is to rotate between the Governor and the highest statewide official not of the same party as the Governor.

Issues

Plaintiffs challenge the CCEA on the following state constitutional grounds:

First, Plaintiffs allege that the organization of the CCEC violates Article III of the Arizona Constitution, which requires a separation of powers among the three branches of government.

Second, Plaintiffs allege that the Arizona Constitution does not grant the legislative branch the authority to delegate additional duties to the Commission on Appellate Court Appointments.

Finally, the Plaintiffs argue that the title "Citizens Clean Election Act" fails to alert readers as to the contents of the act in violation of Article. IV part 2, § 13 of the Arizona Constitution.

This Court will only discuss the parties' severability arguments if one or more of the challenged provisions are found to violate the Arizona Constitution.

Discussion

The law recognizes a strong presumption supporting the constitutionality of state statutes, and the party asserting their unconstitutionality bears the burden of overcoming that presumption. Lake Havasu City v. Mohave County, 138 Ariz. 552 (App. 1983). No act of the legislative branch shall be declared unconstitutional unless a court is convinced beyond a reasonable doubt that it contravenes the Arizona Constitution. Morrison v. Nabours, 79 Ariz. 240 (1955). If after carefully scrutinizing a challenged statute, a court determines its purpose and effect is to violate the constitution, it shall hold such statute void. Id. With these principles of law in mind, this Court will now address each of the CCEA's alleged constitutional violations.

I. Separation of Powers

Article III of the Arizona Constitution requires a strict separation of powers between our three branches of government.[2] Arizona courts have not required an absolute separation of powers, even though the language of Article III appears to absolutely prohibit any commingling of the three types of powers, because "it is clear that almost every day an absolute theory of separation of powers would be violated." J.W. Hancock Enterprises v. Arizona Registrar of Contractors, 142 Ariz. 400, 405 (App. 1984). Id. Modern government requires a blending of powers in order to operate with any degree of efficiency. Id. Each branch of government, through the appropriate performance of its core functions, serves as a check and balance on the others. Generally, the legislative branch legislates (creates laws), the executive branch administers, regulates, enforces and faithfully executes the law, and the judicial branch interprets the law and adjudicates cases and controversies. No branch may constitutionally remove from another its core functions.

When one branch allegedly encroaches on the powers of another branch, the courts are instructed to use the following four-prong balancing test: (1) What is the essential nature of the power being exercised?; (2) What degree of control over another branch does the challenged authority have in the exercise of that power?; (3) What is the objective of the legislation?; (4) What are the practical consequences of the action, if any? State of Arizona ex. rel. Woods v. Block, 189 Ariz. 269 (1997) (adopting the four-prong balancing test for separation of powers issues articulated in Hancock, 142 Ariz. 400). This test permits flexibility while preserving the goal of the separation of powers clause. Id.

A. Alleged Judicial Encroachment on Executive Power

Plaintiffs argue that the judicial branch controls the process of appointing commissioners to the CCEC to such an extent that it has a coercive influence on the CCEC. Essentially,

Plaintiffs claim that the judicial branch retains some measure of control over the CCEC even after the appointment process. They offer two reasons for their position. First, the Commission on Appellate Court Appointments provides the slate of candidates for each empty seat on the CCEC from which designated state officials make an appointment, and second because Supreme Court Justices are permitted to make appointments to the CCEC under the CCEA. See A.R.S. § 16-955.

All parties agree that the powers and duties exercised by the CCEC are executive powers. However, Plaintiffs have produced no evidence, nor advanced any theory that supports the proposition that the judicial branch controls, to any extent, the CCEC in the exercise of its duties. The Commission on Appellate Court Appointments' role under the CCEA is to screen potential candidates as a part of the appointment process. The appointment power is an executive power. Ahearn v. Bailey, 104 Ariz. 250 (1969). Under the first prong of the balancing test, the Commission on Appellate Court Appointments clearly exercises some measure of control over an executive function.

After providing three candidate slates from which state officials choose members, the Commission on Appellate Court Appointments' role in the process of selecting CCEC commissioners ceases. The second prong requires this Court to determine the degree of control the judicial branch exerts over the executive branch based on its role mandated under the CCEA. The Commission does not choose the final candidate. The designated state officials make the final choice of which candidates to appoint as commissioners to the CCEC. Even though the Attorney General has opined that an official may not request additional slates of candidates (See Op. Att'y. Gen. No. I99-013 (May 4, 1999)), it is reasonable to conclude that the CCEA provisions concerning slates of candidates exert no more than a very low degree of control over another branch of government and are more cooperative than coercive.

Turning to the third prong, one objective of the legislation is to create a non-partisan, non-political commission completely insulated from political pressure. The legislation is well suited to achieve that objective. The issue here is whether the Commission on Appellate Court Appointments can provide some special expertise to the executive branch in making appointments to the CCEC, or whether the Commission's involvement rises to the level of usurping executive power. The Commission on Appellate Court Appointments is well suited and experienced at finding qualified, non-partisan, and ethical individuals. In addition to selecting judicial candidates, the Commission could be of some service to the executive branch. Even though the Commission's past experience has been to find judicial nominees, the task of finding honest, independent, ethical, impartial candidates committed to upholding the public's confidence and trust in the electoral process is quite similar.

Practically, the Commission on Appellate Court Appointments has no control over the actual candidate selected to serve as a CCEC commissioner. It is difficult to find any usurpation of executive power by the judicial branch with the Commission's involvement in the appointment of CCEC commissioners.

As for Supreme Court Justices being involved in the appointment process, on its face may give rise to some concerns. It obviously concerned the Justices who declined to make an

initial appointment to the CCEC as they were permitted to do under the CCEA. The reason for passing on the opportunity to appoint a commissioner to the CCEC was because litigation concerning the CCEA was pending before the Supreme Court. Plaintiff's Exhibit F. In fact, the Chief Justice recused himself from those proceedings because of his involvement as chair of the Commission on Appellate Court Appointments. The practical consequences of judicial involvement in the appointment process may require such recusals, but making such an appointment does not rise to the level of exerting coercive influence over the CCEC.

Plaintiff's arguments must fail. Neither the Commission on Appellate Court Appointments, by screening candidates, nor any Supreme Court Justice, by making an appointment to the CCEC, has any influence or authority over the CCEC. Since the judicial branch exerts no influence over the CCEC in the performance of its duties,

THIS COURT FINDS that the role played by the judicial branch does not impermissibly encroach upon executive branch of government and therefore the CCEA does not violate Article III in that regard.

B. Senate Confirmation

As for the Senate's confirmation of the Governor's removal of CCEC commissioners pursuant to A.R.S. § 16-955(E), the pivotal case addressing this issue is Ahearn v. Bailey, 104 Ariz. 250, which held that the power to remove unfaithful subordinates is a proper exercise of executive power in Arizona. Further, "while the Legislature may prescribe the grounds or causes for removal . . . it may not directly undertake to remove a public officer except as granted under the constitutional power of impeachment." Id. at 253 (emphasis added). As the constitutional officer charged with executing the law, the Governor must retain the authority to remove unfaithful subordinates. Id. The CCEA clearly goes farther than simply prescribing the grounds or causes for removal, but stops short of permitting the Legislature to directly remove CCEC commissioners. However, requiring the Senate to concur with the Governor's decision to remove a member of the CCEC does place a direct burden on the executive removal power. Clearly in violation of Ahearn, no member may be removed unless the Senate agrees with the Governor's decision to remove the member. A.R.S. § 16-955(E).[3]

Defendants argue that because the Senate can not initiate the removal of officers the confirmation power given to the Senate is constitutional because the Legislature does not have the power to directly remove a public officer. However, Ahearn also instructs that unless authorized by the constitution, no branch "can exercise any power which directly or indirectly tends to limit the constitutional independence and power of the other branches of the government." 104 Ariz. at 252 (citing Crawford v. Hunt, 41 Ariz. 229 (1932)) (emphasis added). Senate approval of the Governor's exercise of executive power to remove an executive officer directly limits the executive branch's constitutional independence. Under the CCEA, the legislative branch has already prescribed the grounds or causes for which a CCEC commissioner may be removed. See Endnote 3. Requiring Senate concurrence for removal of commissioners impermissibly intrudes upon the province of the executive branch. Therefore,

THIS COURT FINDS, beyond a reasonable doubt, that the Senate's confirmation power over the Governor's removal of CCEC commissioners violates Article III.

II. Role of the Commission on Appellate Court Appointments

The Commission on Appellate Court Appointments was created by AZ Const. art. VI, § 36 (amended 1992). Its duties are further described in AZ Const. art. VI, § 37 (amended 1992).

Plaintiffs argue that the legislative branch can not expand the duties of the Commission on Appellate Court Appointments because to do so is repugnant to the purpose of the Commission and prohibited by construing other provisions of the constitution. Adams v. Bolin, 74 Ariz. 269 (1952). Plaintiffs point out that, with regard to the Corporation Commission, for example, the constitution specifically authorizes the legislative branch to enlarge the Corporation Commission's duties. AZ Const. art. XV, § 6.[4] Constitutional provisions must be interpreted so that no word, sentence, or clause is rendered a nullity. City of Phoenix v. Yates, 69 Ariz. 68 (1949). Plaintiffs argue that the additional duties delegated to the Commission on Appellate Court Appointments in A.R.S. § 16-955[5] are contrary to the Commission's constitutional purpose, and that permitting the delegation of such duties, absent an express grant of power, would render the grant of power to expand the Corporation Commission's duties null and void.

Defendants counter that "[u]nlike the Federal Constitution, state constitutions are not grants of power, but instead limitations [of power]." Adams v. Bolin, 74 Ariz. at 282. "In Arizona, . . . the Legislature has all power not expressly denied it or granted to another branch of government." Salt River Pima-Maricopa Indian Community v. Hull, 190 Ariz. 97, 103 (1997). Since the legislative branch is not expressly denied the power to add to the duties of the Commission on Appellate Court Appointments, Defendants argue that the legislative branch may expand the Commission's duties.

The constitution must be read as a whole and its various parts considered together. Kilpatrick v. Superior Court In and For Maricopa County, 105 Ariz. 413 (1970). Therefore, reference to AZ Const. art. XV, § 6 to determine the proper scope of the legislative power may be appropriate, but it is not necessary on these facts.

There is no question that the legislative branch has the authority to create an entity to screen candidates to the CCEC pursuant to its inherent police power. However, the issue here is not whether reference to AZ Const. art. XV, § 6 requires an express grant of power in the constitution to permit the legislative branch to delegate new duties to the Commission on Appellate Court Appointments, but whether the legislative branch's particular delegation under the CCEA violates the intent and purpose of the framers of AZ Const. art. VI §§ 36 - 37. The answer must be "yes." In construing the constitution, this Court must give effect to the purpose indicated by the language and context of the constitution. State ex rel. Morrison v. Nabours, 79 Ariz. 240 (1955). Article VI of the Arizona Constitution deals exclusively with the judicial branch of government. The purpose of the Commission on Appellate Court Appointments is to screen and recommend qualified candidates to serve as judges. It is highly unlikely that the drafters intended the Commission to screen candidates for any position other than the state's appellate courts. It is elementary that the delegation of duties to the Commission, unrelated to

the judicial branch of government, and the recommendation of judges or justices to the Governor in particular, is repugnant to AZ Const. art. VI, §§ 36 – 37.

While the Commission on Appellate Court Appointments appears to be an ideal body to screen candidates for the CCEC, it may not be delegated any duties repugnant to its purpose. To rule otherwise would be contrary to the duty given by the constitution to the Commission on Appellate Court Appointments. Therefore,

THIS COURT FINDS, beyond a reasonable doubt, that the CCEA's grant of additional duties to the Commission on Appellate Court Appointments violates the Arizona Constitution.

III. Alleged Inadequacy of the Title

> Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to as much thereof as shall not be embraced in the title. AZ Const. art. IV, pt. 2, § 13.

Plaintiffs argue that once an initiative has been passed by the voters, AZ Const. art. IV, pt. 2, § 13 applies just as it would to a bill passed by the Legislature. Defendants argue that AZ Const. art. IV, pt. 2, § 13 does not apply to initiatives. Instead, Defendants argue that the appropriate standard for determining the sufficiency of a title for a ballot initiative is AZ Const. art. IV, pt. 1, § 1 (amended 1998).

In Iman v. Bolin, the Arizona Supreme Court stated that AZ Const. art. IV, pt. 2, § 13 "is applicable only to acts of the legislature." 98 Ariz. 358, 365 (1965) (emphasis added). However, the procedural posture of that case was such that the voters had not yet enacted the initiative being challenged. The Plaintiffs have a valid argument that there is room under Iman to find that AZ Const. art. IV, pt. 2, § 13 applies to an initiative after its enactment by the voters.

AZ Const. art. IV, pt. 2, § 13 is meant to be a prophylactic provision. Its purpose is to prevent logrolling and the surprise found in hodge podge legislation. In re Don Cabezas Power District, 17 Ariz. App. 414 (1972). Based on the plain language of AZ Const. art. IV, pt. 2, § 13, this section applies equally prior to the enactment of a law by the Legislature, just as it does after its enactment. After all, AZ Const. art. IV, pt. 2, § 13's title is "Subject and title of bills." (emphasis added).

Regarding the initiative power, it would waste judicial resources and short change the power of our citizens to rule that a more stringent standard for sufficiency of title applies after a vote is taken on an initiative than before. Such a finding would also be inconsistent with the intent of AZ Const. art. IV, pt. 2, § 13, which is to prevent laws from being passed without a title sufficient to put the legislators on notice of the bill's contents. The test for a ballot initiative's title is set forth in AZ Const. art. IV, pt. 1, § 1, and has been articulated in Barth v. White, 40 Ariz. 548 (1932), as the liberal "some title – some text rule." The CCEA's title has already been deemed acceptable under that standard by the Arizona Supreme Court in Meyers v. Bayless, 192 Ariz. 376 (1998). Therefore,

THIS COURT FINDS THAT AZ Const. art. IV, pt. 2, § 13 does not apply to ballot initiatives adopted by the citizens of this state. The title "Citizen's Clean Election Act" is valid under our state constitution.

IN THE ALTERNATIVE, even if AZ Const. art. IV, pt. 2, § 13 does apply, the standard for determining the validity of the title is very liberal. "Article IV, part 2, section 13 of the constitution . . . does not require that the title be an index to the contents of the act but is satisfied if it states the subject in general terms without disclosing the details of the legislation." In re Lewkowitz, 69 Ariz. 347, 350-51 (1950) (rev'd, In re Lewkowitz, 70 Ariz. 325 (1950) adopting the quoted rule of statutory construction). "The title may be broad in its scope and this puts the legislator on notice that the proposed legislation may be equally broad in its scope." Industrial Develop. Auth. of Cty. of Pinal v. Nelson, 109 Ariz. 368, 374 (1973). If any legal basis can be found for upholding the CCEA it should be upheld. Under Arizona law, creating too detailed a title could endanger other portions of an act. See Taylor v. Frohmiller, 52 Ariz. 211 (1938).

Plaintiffs argue that the title "Citizens Clean Elections Act" would only put a person on notice of minor changes to the election system, such as updating voter registration. This Court does not agree. A reasonable person would realize that the words "clean elections" involve campaign finance reform. Keeping in mind that the purpose of AZ Const. art. IV, pt. 2, § 13 is to prevent surprise, Defendants argue that all of the circumstances surrounding the adoption of an initiative should be taken into account. This Court agrees.

On the facts of this case, taking into account all of the surrounding circumstances, there was no intent to deceive or hide the contents of Proposition 200. The Plaintiff's exhibits show that the public had notice of the provisions of the CCEA before they voted on the issue. The public had ample opportunity to examine the full contents of the CCEA, more of an opportunity than they would have had if this initiative had been passed as a bill by the Legislature. Voters were mailed copies of the full text, along with letters of support and letters of opposition. It can not properly be said that the proponents of the CCEA "hid" the contents of the initiative from the public. It is the duty of each individual citizen to closely examine ballot initiatives and vote based on an informed decision.

The CCEA meets the liberal construction standards of AZ Const. art. IV, pt. 2, § 13 and no provision should be struck as unconstitutional for not being embraced by the title. Therefore, in the alternative,

THIS COURT FINDS that the title "Citizen's Clean Election Act" is sufficient under AZ Const. art. IV, pt. 2, § 13.

IV. Severability

Having found that both the Senate confirmation of executive removal and the delegation of additional duties to the Commission on Appellate Court Appointments violate the Arizona Constitution, it is necessary to address the parties' severability arguments.

In order to find an unconstitutional portion of a statute severable, the legislative branch must have intended the act to be severable. State Compensation Fund v. Symington, 174 Ariz. 188 (1993). The CCEA contains a severability clause. Therefore,

THIS COURT FINDS that the legislative branch intended the CCEA to be severable.

Pursuant to Hull v. Albrecht, 192 Ariz. 34, 39-40 (1998), a court will sever a statutory provision only if "(1) the valid portions are effective and enforceable standing alone and (2) the legislature would have enacted the valid portions of the statute absent the invalid provision." In the case of voter approved initiatives, such as the CCEA, it is difficult to determine whether the valid portions would have been adopted absent the unconstitutional provision. The Arizona Supreme Court recently took note of this fact and articulated what is arguably a new test for severability.

> When the voters approve a measure, however, we have no legislative history to guide us in discerning voter intent. Indeed, each voter's intent may be distinct from that of other voters. For that reason, in deciding whether to sever the invalid portion of a measure adopted by popular vote and uphold the remaining, valid portion, we will apply the following test. We will first consider whether the valid portion, considered separately, can operate independently and is enforceable and workable. If it is, we will uphold it unless doing so would produce a result so irrational or absurd as to compel the conclusion that an informed electorate would not have adopted one portion without the other. Randolph v. Groscost, CV99-0054-SA (Ariz. 1999).

A. Senate Confirmation

It is clear, under the first part of the Randolph test, that absent Senate confirmation of executive removal, the CCEA would still be workable and enforceable. However, the question still remains whether the citizens would have enacted the CCEA without such a provision. Given the objectives of the CCEA, it is certainly arguable that the citizens would not have passed this Act absent the additional protection of the CCEC from potential political pressure. However, on balance, it would not be absurd for the citizens to have passed the CCEA without such a provision. This appears to be so, especially considering the fact that the Governor is only permitted to remove commissioners for "substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office" or for violating the CCEA. The confirmation power granted to the Senate under the CCEA is not so integral to the Act as to require a finding of non-severability. Therefore,

THIS COURT FINDS that the Senate concurrence of the Governor's removal power under A.R.S. § 16-955(E) is severable.

B. Role of the Commission on Appellate Court Appointments

Applying the Randolph test to the section involving the Commission on Appellate Court Appointments, it necessary to determine if the CCEA is still operable, enforceable, and workable. Defendants argue that even without the Commission on Appellate Court

Appointments, the CCEA is still workable because the state officials, in appointing members to the CCEC, will still be bound by the independent qualifications found in A.R.S. § 16-955(A)-(B). See Endnote 5. Technically, they may be correct. However, this Court does not believe an informed electorate would have adopted the CCEA absent a provision to ensure that the CCEC commissioners would be nominated in a manner free from all partisan considerations. It is irrational to conclude that the citizens would have approved the CCEA absent some meaningful control over the qualifications and credentials of the candidates selected to serve on the CCEC. The entire CCEA is specifically structured to ensure that the CCEC is insulated from partisan considerations; a principal purpose of the CCEA is to ensure that election are "clean."

THIS COURT FINDS, beyond a reasonable doubt, that the legislative branch would not have enacted the CCEA absent the involvement of the Commission on Appellate Court Appointments, or some other specified entity, to screen candidates for the CCEC. Therefore,

IT IS ORDERED that "Article II. Citizens Clean Elections Act," A.R.S. §§ 16-904 – 16-961 is unconstitutional, based on this Court's legal conclusion that the duties delegated to the Commission on Appellate Court Appointments violate the Arizona Constitution and that the Commission's role is not severable from the rest of the Act.

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1 **Article IV Legislative Department**

Part 1. Initiative and Referendum

§ 1. Legislative authority; initiative and referendum

Section 1. (1) **Senate; house of representatives; reservation of power to people.** The legislative authority of the State shall be vested in the Legislature, consisting of a Senate and a House of Representatives, but the people reserve the power to propose laws and amendments to the Constitution and to enact or reject such laws and amendments at the polls, independently of the Legislature; . . .

(2) **Initiative Power.** The first of these reserved powers is the Initiative. Under this power ten per centum of the qualified electors shall have the right to propose any measure, and fifteen per centum shall have the right to proposed [sic] any amendment to the Constitution.

2 **Article III Distribution of Powers**

The powers of the government of the State of Arizona shall be divided into three separate departments, the Legislative, the Executive, and the Judicial; and, except as provided in this Constitution, such departments shall be separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others.

3 A.R.S. § 16-955(E)

Members of the commission may be removed by the governor, with concurrence of the senate, for substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office, or violation of this section, after written notice and opportunity for a response.

4 **Art. XV, § 6 Enlargement of powers by legislature; rules and regulations**

The law-making power may enlarge the powers and duties of the Corporation Commission, and may prescribe rules and regulations to govern proceedings instituted by and before it; but, until such rules and regulations are provided by law, the Commission may make rules and regulations governing such proceedings.

5 A.R.S. § 16-955. Citizens clean election commission; structure

A. The citizens clean election commission is established consisting of five members. No more than two members of the commission shall be members of the same political party. No more than two members of the commission shall be residents of the same county. No one shall be appointed as a member who does not have a registration pursuant to chapter 1 of this title that has been continuously recorded for at least five years immediately preceding appointment with the same political party or as an independent.

B. The commission on appellate court appointments shall nominate candidates for vacant commissioner positions who are committed to enforcing this article in an honest, independent, and impartial fashion and to seeking to uphold public confidence in the integrity of the electoral system. Each candidate shall be a qualified elector who has not, in the previous five years in this state, been appointed to be, been elected to, or run for any public office, including precinct committeeman, or served as an officer of a political party.

C. Initially, the commission on appellate court appointments shall nominate five slates, each having three candidates. Before January 1, 1999. No later than February 1, 1999. The governor shall select one candidate from one of the slates to serve on the commission for a term ending January 31, 2004. Next, the highest-ranking official holding a statewide office who is not a member of the same political party as the governor shall select one candidate from another one of the slates to serve on the commission for a term ending January 31, 2003. Next, the second-highest-ranking official holding a statewide office who is a member of the same political party as the governor shall select one candidate from one of the three remaining slates to serve on the commission for a term ending January 31, 2002. Next, the second-highest-ranking official holding a statewide office who is not a member of the same political party as the governor shall select one candidate from one of the three remaining slates to serve on the commission for a term ending January 31, 2001. Finally, the third-highest-ranking official holding a statewide office who is a member of the same political party as the governor shall elect [sic] one candidate from the last slate to serve on the commission for a term ending January 31, 2000. For purpose of this section, the ranking officials holding statewide office shall be governor, secretary of state, attorney general, treasurer, superintendent of public instruction, corporation commissioners in order of seniority, mine inspector, the members of the supreme court in order of seniority, senate majority and minority leaders, and house majority and minority leaders.

D. One commissioner shall be appointed for a five-year term beginning February 1 of ever y year beginning with the year 2000. The commission on appellate court appointments shall nominate one slate of three candidates before January 1 of each year beginning in the year 2000, and the governor and the highest-ranking official holding a statewide office who is not a member of the same political party as the governor shall alternate filling such vacancies. The vacancy in the year 2000 shall be filled by the governor.

E. See Endnote 3.

F. If a commissioner does not complete his or her term of office for any reason, the commission on appellate court appointments shall nominate one slate of three candidates as soon as possible in the first thirty days after the commissioner vacates his or her office and a replacement shall be selected from the slate within thirty days of nomination of the slate. The highest-ranking official holding a statewide office who is a member of the political party of the official who nominated the commissioner who vacated office shall nominate the replacement, who shall serve as commissioner for the unexpired portion of the term. A vacancy or vacancies shall not impair the right of the remaining members to exercise all of the powers of the board.